

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

TOUCHCOM INC. and TOUCHCOM
TECHNOLOGIES, INC.,

Plaintiffs,

VS.

BERESKIN & PARR and
H. SAMUEL FROST.

Defendants.

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No. 1:07-cv-00114-JCC-TCB

STIPULATION OF UNCONTESTED FACTS

Touchcom Technologies, Inc., Bereskin & Parr, and H. Samuel Frost stipulate that the following facts are uncontested:

1. Plaintiff Touchcom Technologies, Inc. is a corporation organized under the laws of Ontario.

2. When the alleged acts at issue in this lawsuit occurred, Defendant Bereskin & Parr (“B&P”) was a Canadian intellectual property firm that, among other things, practiced before the United States Patent and Trademark Office (USPTO) to obtain patents on behalf of Canadian clients.

3. When the alleged acts at issue in this lawsuit occurred, Defendant H. Samuel Frost was a partner of B&P.

4. On August 6, 1987, Frost prepared and filed a patent application in Canada (the “Canadian Application”) concerning an invention related to an interactive pump system that can be used with fuel dispensers at gasoline stations (the “Interactive Pump System”).

5. The Canadian Application issued to Peter Hollidge as Canadian Patent No. 1,301,929 on May 26, 1992 (the “Canadian Patent”).

6. On instructions from Hollidge, Frost instructed Haseltine Lake & Co., a British firm, to file an international patent application concerning the Interactive Pump System in the British Patent Office under the Patent Cooperation Treaty (the “PCT Application”).

7. The PCT Application was filed on August 5, 1988.

8. On December 28, 1989, Frost caused a request for national phase treatment for the Interactive Pump System application to be filed with the USPTO (the “U.S. Application”).

9. Frost prosecuted the U.S. Application.

10. The U.S. Application named Hollidge as the sole inventor.

11. During prosecution of the U.S. Application, Frost only presented claims with elements in “means-plus-function” form, as provided for under 35 U.S.C. § 112, paragraph 6.

12. The U.S. Application issued as United States Patent No. 5,027,282 (the “’282 patent”) on June 25, 1991.

13. Touchcom, Inc. and Touchcom Technologies, Inc. entered into a licensing agreement, entitled “Touchcom Licensing Agreement,” dated June 1, 1989.

14. In 2003, Touchcom, Inc. and Touchcom Technologies, Inc. sued Dresser, Inc. for infringement in the United States District Court for the Eastern District of Texas.

15. On December 5, 2005, the Eastern District of Texas court issued an opinion stating that the ’282 patent was invalid.

Dated: August 17, 2011

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, August 17, 2011, I will electronically file the foregoing Stipulation of Uncontested Facts with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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